

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 405 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 : NO

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BHAVESH CHANDRAKNAT BHATT

Versus

STATE OF GUJARAT

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Appearance:

MR JB PARDIWALA for Petitioner  
MR SR DIVETIA APP for Respondent No. 1  
MR BHARAT T RAO for Respondent No. 2

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 28/07/98

ORAL JUDGEMENT

Heard learned advocates for the respective parties. This application under Section 397 read with 401 of the Code of Criminal Procedure has been preferred by the accused in Criminal Case No. 105 of 1998 against

the order dated 12th June, 1998 made by the learned Addl. Principal Judge, Ahmedabad on applications Exhs. 2 & 3 made by the applicant-accused.

2. It appears that the applicant had married one Hetalben Kantilal Patel, since deceased, on 18th January, 1997 against the wishes of the parents of said Hetalben. The factum of the said marriage was concealed from the parents of the said Hetalben and even after the marriage she continued to reside with her parents. However, on 9th May, 1997 she left the home of her parents and went to reside with the applicant. At the time of leaving her parents' home, she also made an application to the Police Inspector, Naranpura Police Station to the effect that she was a major and that she had married to one Bhavesh Chandrakant Bhatt, the present applicant, and applied for police protection in the event any complaint were filed against them. It appears that after the said Hetalben went to reside with the applicant, the applicant and Hetalben started receiving intimidating and obscene phone calls. The applicant, therefore, on 2nd June, 1997 made an application to the Divisional Engineer {Internal}, Bapunagar Telephone Exchange informing him about the obscene phone calls received by him and his wife and requesting him to place his telephone, having connection No. 2742342, under observation. On 25th July, 1997 said Hetalben died of consumption of poison and a complaint in this respect has been lodged with Bapunagar Police Station by the father of late Hetalben. The said complaint has been registered as C.R No. I-194-97. After the police submitted its report, the case has been committed to the court of learned Sessions Judge, Ahmedabad. After the committal, the applicant made above referred applications, Exh. 2 & 3. In application Exh. 2, the petitioner requested that the application made by late Hetalben to the Police Inspector, Naranpura Police Station on 9th May, 1997 and the information from the Divisional Engineer, Bapunagar Telephone Exchange in respect of his application dated 2nd June, 1997 be called for. Applicant also made an application Exh. 3 for copies of the statements recorded by the police in the course of investigation. Both the said applications were rejected by the learned Addl. Principal Judge, Ahmedabad on 12th June, 1998, as aforesaid. Feeling aggrieved, the applicant has preferred the present application.

Mr. Pardiwala, the learned advocate for the applicant has stated that he does not press his challenge to the order of the learned trial Judge in so far as it rejects the application Exh. 3 made by the applicant. In other words, he has confined his challenge to the

order rejecting application     Exh.            2     alone.     Mr. Pardiwala has submitted that accused has a right to plead his defence even before framing of charge by the trial Court. He submitted that the trial Court, under Sections 91 and 92 CrPC, has power to summon production of document which is necessary or desirable for the purpose of inquiry or trial. He has submitted that such document can be produced by the accused after he enters his defence in the course of trial. However, the said right cannot be refused even prior to framing of charge. In support of his submission, he has relied upon judgment of the Supreme Court in the matter of Satish Mehra v. Delhi Administration & Anr. {1996 SCC (Crimes) 1104}. While answering the question whether the Sessions Judge can look into any material other than those produced by the prosecution, the Court held that, ".... the Sessions Judge is enjoined to decide whether there is sufficient ground to proceed against the accused. In so deciding the Judge has to consider : (a) the record of the case; and (b) the documents produced therewith. He has then to hear the submissions of the accused as well as the prosecution on the limited question whether there is sufficient ground to proceed." The court further held that, "the Code enjoins on the Court to give audience to the accused for deciding whether it is necessary to proceed to the next stage. It is a matter of exercise of judicial mind. There is nothing in the Code which shrinks the scope of such audience to oral arguments. If the accused succeeds in producing any reliable material at that stage which might fatally affect even the very sustainability of the case, it is unjust to suggest that no such material shall be looked into by the Court at that stage." The next judgment which Mr. Pardiwala has relied upon is that of High Court of Andhra Pradesh in the matter of K.V Rama Krishna Reddy v. The State, {1975 Cri.L.J 980}. While dealing with a similar question, the High Court of Andhra Pradesh held that, "... The right given to the Court under Section 91 is undoubtedly different from right given under Section 243 (2), Criminal Procedure Code. It cannot be argued that the accused has no right to apply for the production of any document at the stage of framing of charge or at any other stage before the accused had entered upon the defence, as Section 91 CrPC gives such a right to the accused independent of the provisions of Section 243 (2) CrPC. The right given to the accused under Section 91 is the general right and it is in no way, circumscribed or controlled by Section 243 (2) CrPC. The accused is entitled to invoke the benefit given under Section 91 at any stage, may it be at the stage of investigation or any other proceeding under the Code." A similar view has been

expressed by the Division Bench of Andhra Pradesh High Court in the matter of Dr. Raghotham {1963 (2) Cr. L.J 252}.

Mr. Divetia, the learned APP has appeared for the State and has contested the application. He has supported the judgment and order passed by the learned trial Judge and has submitted that the applicant can produce any material in his defence at the time, after entering his defence and the present application Exh. 2 made before framing of charge is not maintainable. He has also submitted that the impugned order being interlocutory order, revision application under Section 397 CrPC is not maintainable. The question of maintainability of this revision application under Section 397 CrPC has been answered by Mr. Pardiwala by relying on the judgment in the matter of K.V Rama Krishna Reddy v. The State (Supra). In paragraphs 14 & 15 of the judgment, the very question has been answered by the learned Judge of the Andhra Pradesh High Court and has held that the revision application against such an order would be maintainable.

Mr. Divetia is right in arguing that the applicant would be at liberty to raise whatever defence he wants after he enters his defence. He is also right that such a stage should come only after prosecution closes its evidence. However, the question is whether is that the only stage when the accused can raise his defence. As held in judgments referred to hereinabove, the accused has a substantial right of audience at the stage before framing of charge and to raise defence which he intends to plead. If such a substantial right has been conferred upon the accused in the Code, the same cannot be denied to him by ignoring his defence which he may disclose at that stage. In my view, therefore, the learned trial Judge is not right in rejecting the application Exh. 2 made by the applicant. In so far as maintainability of the present application is concerned, I shall follow the judgment of the Andhra Pradesh High Court in the matter of K.V Rama Krishna Reddy, referred to hereinabove.

This application is, therefore, allowed. The judgment and order dated 12th June, 1998 passed by the learned Addl. Principal Judge, Ahmedabad on application made by the present applicant is quashed and set-aside. The application Exh. 2 made by the applicant is allowed. The respondent No. 2 is directed to produce the information in respect of the telephone messages received by the applicant and late Hetalben, recorded by the

respondent no. 2 before the learned Magistrate, within a period of 15 days from today. The learned Addl. Principal Judge shall also call for the application dated 9th May, 1997 made by late Hetalben to the Police Inspector, Naranpura Police Station. The learned Addl. Principal Judge shall proceed further in accordance with law after receiving the above referred documents. Rule is made absolute accordingly. There shall be no order as to costs.

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Prakash\*